Case referred to:-

(1) *Public Prosecutor* v. *Goh Ah Moi* [1949] M.L.J. 156.

MAGISTRATE'S CRIMINAL APPEAL.

Cheng Tim Pin for the appellant.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Choor Singh J.: In this appeal I confirmed the conviction of the appellant on a charge of dishonestly retaining stolen property and altered the sentence of six months imprisonment to a fine of $2,000 or six months imprisonment. The sentence was varied not because it was wrong in law or manifestly excessive but due to circumstances which were entirely out of the control of the learned magistrate who tried this appellant in the court below.

The facts briefly are these. One Santhamoorthi who was sent to fetch a Caterpillar tractor engine from a godown of the Port of Singapore Authority and to deliver it to Tractors Malaysia Ltd. removed the said engine from the said godown but instead of delivering it where it should have been delivered, he went and sold it to a man named Low Yoke Yong for $2,000. Low in turn sold it to the appellant for $6,800. The appellant in turn sold it for $17,000 to a man in Ipoh named Suppiah. When the said engine was delivered to Suppiah in Ipoh it was seized by the police and investigations revealed the transactions which I mentioned earlier. Suppiah had not yet paid the $17,000 to the appellant and obviously he will not do so now when he has lost the engine. Santhamoorthi pleaded guilty to theft of the engine and was sentenced to six months imprisonment. Low pleaded guilty to dishonestly receiving stolen property and was fined $1,000. The appellant was tried and convicted of dishonestly receiving stolen property and was sentenced to six months imprisonment.

Before me, it was pleaded on behalf of the appellant that in the first place the appellant has received the same sentence as that imposed on the thief and secondly, that whereas Low the first "receiver", who made a profit of $4,800 in the transaction, was let off with a fine of $1,000, the appellant who has lost $6,800 in the transaction has been ordered to undergo six months imprisonment, and that in these circumstances although the sentence cannot be labelled as excessive having regard to the nature of the crime, it is manifestly unjust having regard to the sentences imposed on the other offenders involved in the criminal transactions concerning the same engine. In my view there is some merit in this submission. As observed earlier although I consider that the sentence imposed on the appellant appears to be correct in law and not excessive when considered in the light of the facts relating to the appellant's case alone, it is relatively excessive when considered in the light of the sentences imposed on the other persons found guilty on charges relating to the same engine. I am informed that the three offenders were dealt with by different courts and that that probably accounts for the variance in the sentences imposed on the two "receivers". That may well be so but where there are no differentiating factors, as in this case, public interest demands that there should be some consistency in the imposition of sentences on accused persons committing the same or similar offences. Failure to observe this principle may, as in this case, lead to a legitimate complaint by an appellant that he has been dealt with more severely than another who committed an identical offence. It was for these reasons that I decided that the appellant should be given the option of a fine, as such an option was granted to the other "receiver". The maximum fine that a magistrate's court can impose on an accused person is $2,000. Accordingly I altered the sentence of the appellant from that of six months imprisonment to a fine of $2,000 or six months imprisonment. I am compelled to observe that the learned magistrate who imposed a fine of $1,000 on Low, the first "receiver" treated the matter very lightly. Even after paying the fine, that offender made a profit of $3,800. In determining the quantum of a fine a trial magistrate should always take into consideration the profit arising from the offence. As was observed by Pretheroe J. (as he then was) in *Public Prosecutor* v. *Goh Ah Moi*,[1] at page 156,

"if a fine is to be imposed it should be such that it will take away from the convicted offender the desire to offend in a similar manner again. Quite clearly a balance of income left in an offender's pocket after payment of a fine will have precisely the opposite effect and for a court to leave any such balance would be wrong application of the accepted principles".

As a magistrate is not empowered to impose a fine exceeding $2,000, Low, the first "receiver" should have been sentenced, in my opinion, to a term of imprisonment and had that been done, I would not have varied the sentence imposed on the appellant.

Sentence varied.

Solicitors: *Yap & Yap.*

POH KIM NGOH & ANOR. v. YAP CHWEE HOE & ANOR.

[O.C.J. (D'Cotta J.) July 9, 1970]

[Singapore — Suit No. 1160 of 1968]

Negligence — Driver of vehicle leaving ignition keys in switch after parking vehicle — Third party driving car and causing accident — Whether driver of vehicle negligent.

The first defendant in this case was employed as the driver of a Land Rover in the Public Health Department. On the day in question he parked his Land Rover in Cambridge Road in the vicinity of the Cambridge Road Market, as there was some refuse there to be removed. The first defendant left the ignition keys of the Land Rover in the switch and got out of the Land Rover to help the other crew members in removing the refuse. A short while later one of the crew members got into the Land Rover and started it. The Land Rover moved forward and collided with one Chia Peng Teow who was sitting at one of the food stalls nearby as a result of which the said Chia Peng Teow died from the injuries sustained. The plaintiffs claimed as administratrix and co-administrator of the estate of the deceased for damages for the estate and for the benefit of the dependants of the deceased who had suffered damage caused by the negligence of the first defendant, the servant or agent of the Government. It was alleged that the first defendant was negligent in leaving the vehicle unattended in a public road.

Held: in the circumstances of this case the act of the first defendant in leaving the ignition keys in the switch after he had parked his Land Rover was not negligent as he could not reasonably foresee any intervention by a third party. The claim against the defendants must therefore be dismissed.

Cases referred to:-

(1) *Beard* v. *London General Omnibus Co.* [1900] 2 Q.B. 530.

(2) *Ricketts* v. *Thomas Tilling Ltd.* [1915] 1 K.B. 644.

(3) *Fulwood House Ltd.* v. *Standard Bentwood Chair Co.* [1956] 1 Ll. Rep. 163.

(4) *Ruoff* v. *Long & Co.* [1916] 1 K.B. 152.

CIVIL SUIT.

H. E. Cashin (*A. Ramanujan* with him) for the plaintiffs.

Woo Tchi Chu (State Counsel) for the defendants.

Cur. Adv. Vult.

D'Cotta J.: The plaintiff's claim is as administratrix and co-administrator of the estate of Chia Peng Teow deceased for damages for the estate and for the benefit of the dependants of the deceased under section 12 of the Civil Law Ordinance (Cap. 24) who have suffered damage caused by the negligence of the first defendant, the servant or agent of the Government of the Republic of Singapore, in the charge, management and/or control of motor vehicle SGA 8116, whereby the said Chia Peng Teow deceased was killed on the 4th July 1967 and the plaintiffs claim damages under section 7 of the Civil Law Ordinance (Cap. 24).

The facts which are not in dispute are as follows: — The first defendant on the day and at the time in question was employed by the Public Health Department of the Ministry of Health, Singapore. At 4.50 p.m. on the 4th July 1967, the first defendant was driving a Land Rover No. SGA. 8116, the property of the Public Health Department and he was accompanied by four crew members who were presumably employees of the Public Health Department. The first defendant parked his Land Rover in Cambridge Road in the vicinity of the Cambridge Road Market as there was some refuse there which had to be removed. The first defendant and the four crew members got out of the Land Rover. The first defendant left the ignition keys of the Land Rover in the switch. A short while later, one of the crew members, Sim Ah Boon got into the said Land Rover and started it. The Land Rover moved forward for a distance of about 50 feet and came into collision with one Chia Peng Teow who was sitting at one of the food stalls nearby having a meal as a result of which the said Chia Peng Teow died from the injuries sustained.

The plaintiffs called two witnesses one of whom, P.W. 2, is an engineer in charge of transport in the Public Health Department of the Ministry of Health who stated that the vehicle in question was a public health vehicle and that there are rules whereby action is taken against drivers leaving vehicles unattended. Under cross-examination, P.W. 2 stated that disciplinary action is taken against drivers leaving vehicles unattended, depending on the circumstances of the case.

The first defendant in evidence stated that on the day in question at about 4.50 p.m. he parked his Land Rover in Cambridge Road as he saw some refuse there which had to be removed. He pulled up his hand brake, freed his gear and switched off his engine but left the ignition keys in the switch. He then got out and went to the near-side of the vehicle to supervise and assist the crew members to carry the refuse that was there. The first defendant further stated that he did not normally leave his ignition keys in the switch but he would only do so when he is near the vehicle. If he was going away from the vehicle, he usually took the ignition keys with him. The first defendant had been a driver for more than 20 odd years. Under cross-examination, the first defendant admitted that there was not much refuse at that spot and it would take at the most only 10 minutes to remove it. That is the reason why he left the ignition keys in the switch.

Learned counsel for the plaintiffs Mr. Cashin submitted that the onus was on the plaintiffs to establish that there was a duty and if there was a breach of that duty then the plaintiffs had discharged that onus. In support of his contention, Mr. Cashin tendered in evidence the Road Traffic Rules 1950, rule 42 of which reads as follows: —

"No vehicle which is on a public road or street shall be left unattended unless it is rendered immovable by the application of brakes or by some other sufficient means."

Mr. Cashin further contended that according to rule 42 no vehicle should be left on a public road or street unattended unless it is rendered immovable. The fact that the ignition keys were left in the switch did not immobilise the vehicle and therefore there was a breach of the duty of care. In further support of his case, Mr. Cashin then referred to the cases of: *Beard* v. *London General Omnibus Co.*(1); *Ricketts* v. *Thomas Tilling Ltd.*(2) and *Fulwood House Ltd.* v. *Standard Bentwood Chair Co.*(3)

The meaning of "unattended" as given in the *Shorter Oxford* English Dictionary Vol. 2 is as follows: —

"Not having attendants; unaccompanied; with no one in charge."

Both Mr. Cashin for the plaintiffs and Mr. Woo State Counsel dwelt at length on the *Fulwood House* case. The facts of the *Fulwood House* case were briefly as follows: —

An employee of the defendant company left his lorry outside the defendant's warehouse which was situated in a *cul-de-sac* for a few minutes in order to go to the toilet in the defendant's premises. The only other person authorised to drive the said lorry was the defendant's foreman and the driver knew that the foreman was away from work that day. It was the practice of the driver when he left the vehicle outside the defendant's premises to leave the ignition key in the switch so that the foreman could shift the lorry if he so wanted. Another employee of the defendant's firm who had no authority to drive the lorry drove the said lorry and damaged the plaintiff's garage door. It was held that the driver of the lorry was negligent in leaving his vehicle with the ignition key in the switch when he knew the foreman was away from work that day, and further that his negligence was an effective cause

of the subsequent damage to the plaintiff. On appeal it was held by the Court of Appeal that the act of the driver in leaving the ignition key in the switch was not negligent and furthermore that the driver could not have anticipated or reasonably foreseen that another employee of the company would attempt to drive the vehicle.

The facts of the *Fulwood House* case are somewhat similar to the present case with three exceptions. The first being that whereas in the *Fulwood House* case the driver was in the habit of leaving his ignition keys in the switch, the first defendant in this case stated that it was not customary for him to leave the ignition keys in the switch but he only did so when he was near the vehicle. Again in the *Fulwood House* case the driver parked his vehicle in a *cul-de-sac*. The first defendant however in this case parked his Land Rover in a busy street at 5 p.m. Again, in the *Fulwood House* case the driver left his vehicle unattended for 2 minutes. In the present case at no time did the driver leave his vehicle. In fact he was working beside it.

It would have to be shown in this case that the act of the first defendant *i.e.* the act of leaving the ignition keys in the switch after he had parked his Land Rover in Cambridge Road on the day and time in question was a negligent act and that it was an act that a reasonably prudent driver in all the circumstances of the case would not do.

Now, what were the circumstances of the present case. The first defendant admitted that his leaving of the ignition keys in the switch was not a thing he would normally do and he only did it on this occasion because he was working beside the vehicle and the nature of his work was such that it could be completed at the most in about 10 minutes and that was the reason for his action. The first defendant went on to say if he had occasion to leave the vehicle he usually took the ignition keys with him. The second factor to be taken into account is the place where the first defendant parked the Land Rover on the day and time in question. It is not disputed that the place was not far from the Cambridge Road Market. It is also not disputed that there were stalls in the vicinity and at that time of the day Cambridge Road is quite busy.

In *Ruoff* v. *Long & Co.*[4] at page 152, Avory J. in his judgment said

"It is impossible to say that those who leave standing unattended in a road a machine which would not move unless some person intentionally put it in motion are *prima facie* guilty of negligence."

It is pertinent to note that the first defendant did not at any time leave the Land Rover unattended. He was standing next to it or to be more precise on its nearside supervising his crew members at work. He had control over it. Furthermore, the only reason according to the first defendant why he left his ignition keys in the switch was that the nature of the work was such that it could be completed at the most in 10 minutes, in other words he would only be there for 10 minutes. Taking these facts into consideration can it be said that the act of the first defendant in leaving his ignition keys in the switch was a negligent act? I would say certainly not. The mere possibility of accident is not enough to establish liability. The first defendant's very presence beside his Land Rover would denote that he had control over it and had not even temporarily abandoned such control. From the nature of his work *i.e.* supervising and assisting his crew men to carry the refuse from the road on to the Land Rover, it can reasonably be inferred that he was exercising proper control.

In the *Fulwood House* case, Lord Birkett at page 163 had this to say:

"It is easy enough to say that if you leave a lorry with an ignition key in it anybody can come and start it. Of course they can. But one has to be reasonable and to take the reasonable view of what a reasonable man would do."

In all such cases of interference by third parties the question before the court is whether the act of interference is one which the driver of the vehicle ought to have contemplated as likely to happen or one which he could reasonably have foreseen.

Again in *Ruoff* v. *Long & Co., supra,* Avory J. in his judgment at page 152 said

"Admitting that the accident would not have occurred but for the intervention of a third person, was such an intervention a thing which the defendants as reasonable men ought to have anticipated? If it was, then of course it is no answer to say that it was not their original negligence which caused the accident; the intervention is one link in the chain of causation and they are responsible. That leads to the question of whether the defendants, assuming that they were guilty of negligence in leaving the lorry unattended, ought as reasonable men to have anticipated that soldiers or other persons would mount the engine, pull out the safety pin, manipulate three different levers, and so set the lorry in motion. It cannot be said that any reasonable man ought to have anticipated such a set of circumstances; in other words, there was no evidence on which this or any other court could come to the conclusion that this accident ought to have been anticipated."

Similarly in the present case, the first defendant's proximity to the Land Rover, the fact that he had control over it, the fact that he would remain at the place where he parked the vehicle for 10 minutes, sufficient for him to complete his work, renders it highly improbable that he could reasonably foresee that anyone during this short period would intervene to attempt to start the Land Rover, least of all a member of his own crew, who according to the evidence, was a schizophreniac and not a regular member of the crew, but only a stop gap for that particular day.

For these reasons, I find that the act of the first defendant in leaving the ignition keys in the switch after he had parked his Land Rover in Cambridge Road on the 4th July 1967 was not negligent and that he could not reasonably foresee any intervention by a third party. In the circumstances, the claim against the first defendant must fail. Such being the case it follows that the claim against the second defendant must also fail. The plaintiffs' claim against the two defendants is dismissed with costs.

Claim dismissed.

Solicitors: *Osborne-Jones & Co.*